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DEPARTMENT ATTORNEY GENERAL - MPCA

Office Memorandum

DAVID HIRD, DOJ; CHRIS GRUNDLER, EPA;
DEBORAH WOITTE, EPA; PAUL BITTER, EPA;
TO: BOB LEININGER, EPA; DENNIS COYNE, A.G.;
DAVE CRISMAN, PCA; STEVE RINER, PCA;
MARK SIMONETT, PCA

DATE: 8/31/1984

FROM: STEPHEN SHAKMAN *S.S.*
Special Assistant
Attorney General

P R I V I L E G E D

PHONE:

SUBJECT: U.S. v. REILLY TAR: AUGUST 27 CASE PLANNING MEETING

Enclosed is my quick effort at putting to paper what we covered at our August 27 meeting at DOJ. Please note any corrections, omissions, or additions (especially where you are listed as responsible for some task) and send them to me. If much revision is needed, I will send everyone a revised draft.

I have enclosed copies of the meeting agenda only to those who did not receive one on Monday.

SS:kso

cc: Lisa Tiegel, A.G.
Gail Lowry, PCA Site Response
Mike Hansel, PCA Site Response

Office Memorandum

DEPARTMENT ATTORNEY GENERAL - MPCA

TO: REILLY TAR FILE

DATE: 8/31/1984

FROM: STEPHEN SHAKMAN
Special Assistant
Attorney General

P R I V I L E G E D
PHONE:

SUBJECT: CASE PLANNING MEETING AT DEPARTMENT OF JUSTICE ON
AUGUST 27, 1984

The meeting covered the agenda dated August 23 (attached) and also addressed settlement status and the meeting with Reilly on the Administrative Order for drinking water treatment scheduled for September 11 in Chicago. This memo will follow the headings in the agenda.

I. Elements of Affirmative Case

A. Reilly Operations

Ann Kline (DOJ) will work with Dennis Coyne (AG) and Dave Crisman (PCA) on admissions concerning the basics of Reilly's operations.

B. Constituents of Coal Tar

A list of CERCLA hazardous substance found at the Reilly site is included in the EPA Administrative Order of August 1, 1984.

C. W23

Paul Bitter (EPA) estimates that 35-40 gallons of creosote waste were found in the W23 clean out, and that more has spread into the formations surrounding the well bore. These wastes contain many of the multi-ring ("heavy") PAH compounds among which are the carcinogenic compounds. EPA consultant Will Wood is checking this week the Iowa Hygenics Lab which analyzed the materials recovered from W23. Paul said the Hickok firm has retained samples of the W23 material for visual display.

D. Analytical Data/Hydrogeology

Analytical Data

Paul said EPA consultant George Duba is preparing select chain of custody "profiles" in accordance with Paul's June

letter. Duba will also organize on computer tape all the data provided to him. Duba does not have USGS and ERT data. Mark Simonett (PCA) and Ken Stevenson (AG) will check on the data Duba is lacking. When the data is assembled, Paul will have it reviewed by consultants Kimble and Wood.

Paul said that Marc Hult (USGS) has more data on St. Peter contamination. Mark Simonett has been unsuccessful in obtaining this data and will continue trying.

David Hird (DOJ) said that Reilly attorneys have indicated willingness to stipulate on analytical results but not on quality assurance and control.

The need for further ground water analyses by Accurex (EPA contract lab) was discussed at length. A final decision is contingent on the Kimble/Wood review of quality control at labs previously used. This review should be available in early September. At that time a conference call on further sampling should be held among at least David, Paul, Mark, and Steve Shakman (AG). If the prior samples have good quality control, consideration will be given to taking the Accurex samples in the drift, the St. Peter (particularly at the bedrock valley) and the Prairie du Chien (in the direction of Edina). Accurex should have initial data about December 1 and a final report about March 1.

Other recent Prairie du Chien data may be available from St. Louis Park municipal sampling and from Methodist Hospital sampling of its well. Steve Riner (PCA) will check on both and distribute what he obtains.

Steve Shakman will locate correspondence on analytical techniques between Bill Scruton (MDH) and Dennis Forest (EPA - Cincinnati).

Hydrogeology

Mark reviewed the expertise of Hult and Professor Pfannkuch in hydrogeochemistry. Either of them could provide testimony on the general hydrogeology and the factors affecting ground water quality. Hult could cover transport in the drift and Platteville. The additional transport witness would testify on transport in the deeper aquifers. Mark and Chris Grundler (EPA) will work on selection of this additional ground water witness.

E. Health Risks

EPA reservations about Dr. Carnow as the second health expert were raised. The attorneys agreed that Dr. Carnow or some other health expert is needed. Paul has several leads in the Chicago

area which he will check. Chris will check whether Jean Parker (EPA) has a list of possible experts and will also check on Dr. Raymond Harbison, University of Arkansas toxicologist and expert witness in the Vertac case (for State of Arkansas). Dennis will call Dr. Samuel Epstein in Chicago.

F-I. Remedial Measures

Steve Riner, Paul, and Chris met on August 28, 1984, to discuss Remedial Action Plan. Although I have no details, I understand EPA to be concerned about (1) lack of restrictions on future site development, (2) absence of site cover provision, and (3) over-reliance on possible highway construction to provide cap to surficial contamination in the swamp. Steve Riner will gather LMIC information and other soils data as initial step in addressing these concerns. EPA also has a general concern over the need to perform further feasibility study(ies) before a final Consent Decree can be reached.

On the subject of swamp contamination, David highlighted importance of using Hult's chromatograms comparing the fluid in the swamp with commercial creosote oil.

On the drinking water remedy, the concern over PAH in tap water attributable to the distribution pipes must be addressed. Mike Harris (CH₂M Hill) should be consulted on this topic when he is under expert contract. Lisa Tiegel (A.G.) will work with Harris.

II. Case Bifurcation Strategy

Reilly's counsel have informally raised separating the claims of the United States from those of the other plaintiffs. Minnesota and the United States reject this proposal and suggest a bifurcation between liability (to all plaintiffs) and remedy, on the one hand, and past costs and side issues (laches, hold harmless claim, cross claims) on the other, with liability/remedy to be tried first. This proposal would be incorporated into a discovery plan to be reviewed with the parties and then submitted to the Magistrate. (Judge Magnuson, who apparently is telepathic, issued a notice for a pretrial conference at about the time we were discussing this proposal. The conference is to be held at the federal courthouse in St. Paul at 8:30 a.m. on September 19, 1984, and would be an appropriate time to discuss this proposal. We could raise it by letter in advance of the conference.)

III. Administrative Order Process

We discussed modifications to the drinking water Administrative Order of August 1, 1984, likely to be raised by

Reilly at the September 11 meeting on that Order. Reilly may propose use of two columns in parallel rather than three columns in series, reduced pumpage (from 1200 gpm to 800 gpm), and a more relaxed standard for the weak carcinogen quinoline. These topics were to be discussed by Steve Riner, Paul, and Chris on August 28, 1984, and will be further reviewed at the pre-meeting to be held at the EPA Region V Office in Chicago on September 10, 1984, at 10:00 a.m.

Steve Shakman suggested that a representative of St. Louis Park be invited to the September 11 meeting with Reilly. No decision was reached on that suggestion but Steve Riner will review the City's position with its Public Works Director, Dick Koppy, later this week.

SS:kso